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NOTE AND COMMENT.

THE PASSING OF STATE CONTROL OVER RAILWAY RATES.—Congress has exclusive power to regulate interstate commerce, so far as it admits of a uniform system of regulation, and a failure on its part to regulate in a given case is tantamount to a declaration that such commerce shall remain free and unrestricted. *Brown* v. *Houston,* 114 U. S. 622; *Leisy* v. *Hardin,* 135 U. S. 100. The states are, in all such cases, without jurisdiction to regulate, irrespective of what Congress has or has not done.

Nor is this prohibition against state action limited to those matters which constitute a direct regulation of interstate commerce. If state legislation, in effect, exerts a substantial, controlling influence over interstate business, even though its operation is indirect, such legislation comes under the ban of the federal constitution. And in seeking to determine whether a given state law offends against this rule, the Supreme Court "will look for a practical rather than logical or philosophical distinction," and will hold the state legislation unconstitutional "if it bears upon commerce among the states so directly as to amount to a regulation in a *relatively immediate way,*" without regard to name or form. *Galveston, Harrisburg, etc. Ry. Co.* v. *Texas,* 210 U. S. 217.

In 1906 and 1907 the Minnesota Railway and Warehouse Commission ordered sweeping reductions in railway fares and rates throughout the state. These orders, by their terms, related solely to business local to the state, and not to interstate business.

As a matter of fact, however, the companies operating in Minnesota at once reduced their interstate rates to a parity with the intrastate rates ordered by the Commission. This they contended they were practically forced to do, because it was impossible to carry on the business of a common carrier of both local and interstate freight unless the corresponding rates on both classes of traffic were the same.

A bill was soon filed by stockholders of certain of these railroad companies, in the United States Circuit Court sitting in Minnesota, to restrain the companies from maintaining the rates on local traffic prescribed by the State Commission, on the ground that the orders of the Commission, while in terms limited to local business, were in fact a regulation of interstate commerce. *Shepard* v. *Northern Pacific Ry. Co.* (April 8, 1911) 184 Fed. 765.

Judge SANBORN held that the orders of the State Commission were a regulation of interstate commerce, and in the course of a long and elaborate opinion he demonstrated the proposition as follows:—

First Demonstration. Duluth, Minn., and Superior, Wis., are situated side by side at the western extremity of Lake Superior. Each is a distributing point for Minnesota interior towns. If Duluth were given rates into this territory lower than the rates given to Superior, the latter would have its Minnesota business destroyed at once. By reducing intrastate rates for the benefit of Duluth, the Commission in effect excluded Superior from carrying on interstate business with Minnesota interior points. To preserve Superior's interstate commerce thus threatened with destruction, the railroads serving it were obliged by the action of the Minnesota Commission to reduce corresponding interstate rates to the same level. On the western border of Minnesota are several other similar pairs of cities, namely, Grand Forks, N. D., and East Grand Forks, Minn.; Fargo, N. D., and Moorhead, Minn.; Wahpeton, N. D., and Breckenridge, Minn. All of them do a distributing business eastward into Minnesota. By parity of reasoning, both cities in each pair necessarily required equal rates into their common territory, and a reduction in intrastate rates as to one immediately made it imperative that corresponding interstate rates be reduced as to the other.

Second Demontsration. Moorhead, Minn., and Fargo, N. D., are jobbing centers for territory extending toward the west. Prior to 1906 both these cities had equal rates from eastern terminals, and were therefore enabled to compete in this territory which was common to both. Much of the freight distributed from these cities came from Duluth, St. Paul and Minneapolis. Now suppose the rates from the last named cities to Moorhead were lower than the rates to Fargo. Fargo could no longer compete with Moorhead in common territory in North Dakota. Hence Fargo would have to be protected against Moorhead by a reduction of interstate rates. But Bismark, N. D., is also a jobbing center, and part of its territory it holds in common with Fargo. If Fargo is protected against Moorhead by lower freight rates,

Bismark must be protected against Fargo in the same way, and interstate rates from Duluth, St. Paul and Minneapolis to Bismark must come down. Again, Billings, Mont., is a jobbing center, and part of its territory is served also by Bismark. If Bismark is protected against Fargo, Billings must be protected against Bismark. Similarly, Butte, Mont., is a jobbing center, and its territory overlaps that of Billings. If Billings is protected against Bismark by lower rates, Butte must be protected against Billings in the same way. And so on, from jobbing center to jobbing center, *ad infinitum*. Accordingly, the whole fabric of interstate rates is practically destroyed by a general reduction in rates local to a single state.

Of course this case is subject to reversal by the Supreme Court when that tribunal passes upon it, as it is quite certain to do in the course of time. But Judge Sanborn's opinion is exhaustive and painstaking, and presents arguments from which it seems difficult to escape. The case is somewhat similar in principle to that of *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, where the court said: "We cannot fail to recognize the intimate connection which, at this day, exists between the interstate business done by interstate companies and the local business which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business. It is of the last importance that the freedom of interstate commerce should not be trammelled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States." If the principle announced by Judge Sanborn is approved by the Supreme Court, effective general control of intrastate railroad rates will be absolutely denied to the states, and the powers heretofore claimed by state railroad commissions will become largely merged in the vast jurisdiction of the Interstate Commerce Commission.

E. R. S.

CONSTITUTIONALITY OF THE NEW YORK WORKMEN'S COMPENSATION ACT.—In holding the New York Workmen's Compensation Act unconstitutional, the New York Court of Appeals has effectively put a large obstacle in the way of such legislation, not only in New York, but throughout the country. Perhaps no decision in recent months has been commented upon so much and has received so little support as this recent opinion by New York's highest court. *Ives* v. *South Buffalo Ry. Co.* (1911),—N. Y.—, 94 N. E. 431. The act presented a new question. There were no decisions bearing directly upon it. Hence, one may expect to find a long discussion of such general principles of constitutional law as are applicable to the case. And mixed with these principles there is much said on the theoretical and economic questions involved. For the economic phase of the case, see the article on *"The New York Employers' Liability Act,"* by Andrew Alexander Bruce, 9 MICH. L. REV. 684. See also the notes to that article for an extensive statement of the statute.

This statute (Article 14 a. of the N. Y. labor law) enumerates certain lines of work "each of which is determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work